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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 413

HAZEL PARK NON-PARTISAN TAXPAYERS ASSOCIATION, et al.,
Appellants,
vs.
TOWNSHIP OF ROYAL OAK, et al.,
Appellees

Appeal from the Supreme Court of the State of Michigan

BRIEF FOR APPELLEE, TOWNSHIP OF ROYAL OAK ON MOTION TO DISMISS OR AFFIRM

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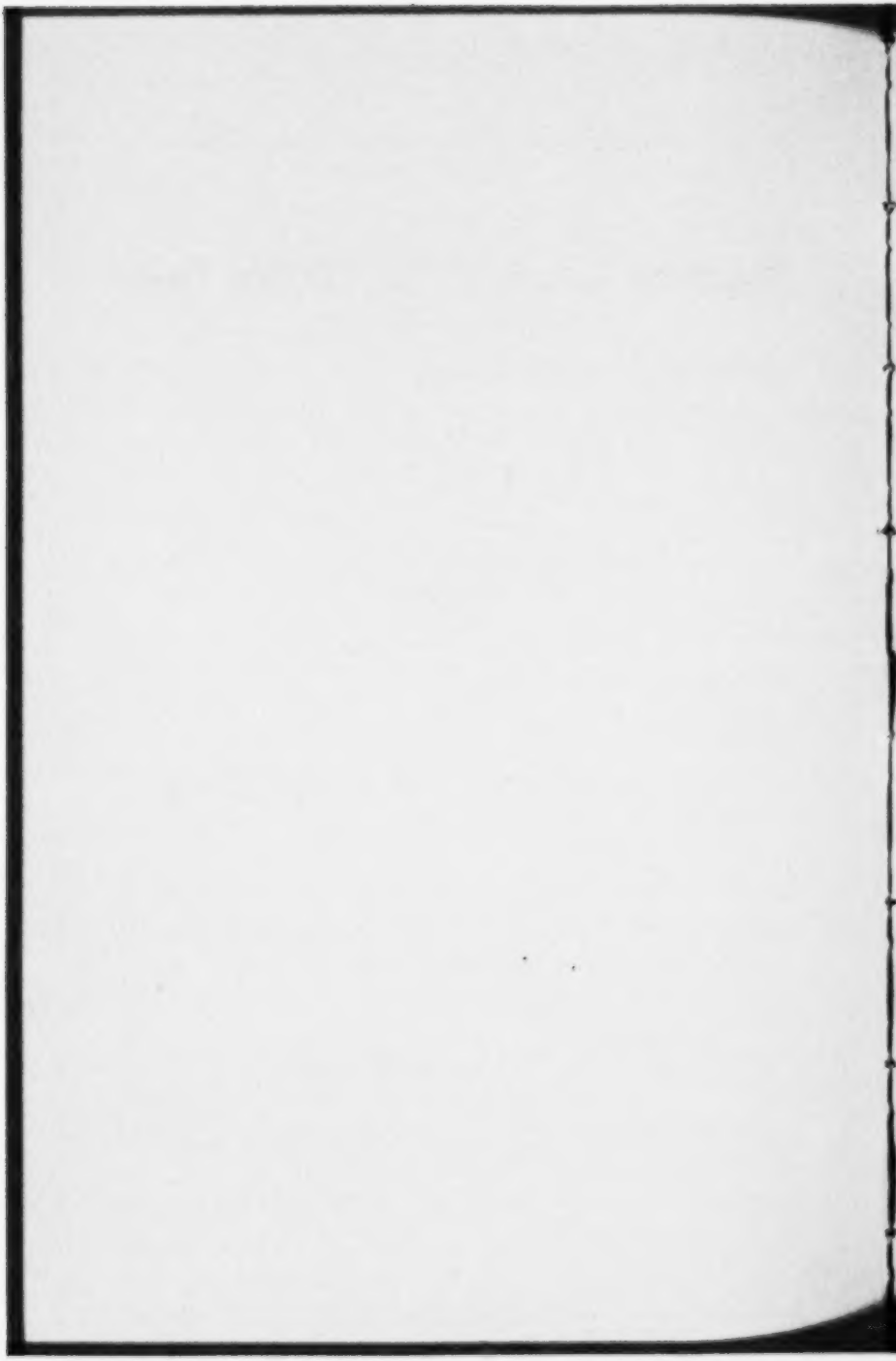

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(As the record has not as yet been printed in this court, the references herein, unless otherwise indicated, are to the record in the state supreme court, a certified copy of which is on file in this court.)

STATEMENT OF THE CASE

(The following brief summary is taken from the opinion of the supreme court of the state of Michigan in *Hazel Park Non Partisan Taxpayers Ass'n. v. Township of Royal Oak,* 317 Mich. 607, from which this appeal was taken.)

Appellants, Hazel Park Non Partisan Taxpayers Association and John G. Campbell, as plaintiffs, and, the cities of Pleasant Ridge and Huntington Woods as cross-plaintiffs, filed suit in the circuit court for Oakland County in chancery to restrain appellee, Township of Royal Oak, from levying or collecting taxes on property in the township lying outside certain special assessment districts and not assessed for benefits, for the purpose of paying installments of principal and interest on certain refunding bonds issued by the township to retire defaulted special assessment bonds originally issued to pay for sewer and water mains in the special assessment districts. Subsequent to the issuing of the special assessment bonds the state legislature enacted an amendment to the bond statute which required the township, in the event at any time a special assessment fund was insufficient to pay bonds and interest, to advance the amount necessary to pay the bonds and interest, to be repaid when such assessments were collected.

The circuit court, following prior decisions of the supreme court of Michigan in *Whitman v. Township of Royal Oak,* 269 Mich. 146 and *Royal Oak v. Pleasant Ridge,* 295 Mich. 284, held that the statute creating the township liability was not unconstitutional; that the township was liable for the payment of the bonds, and, that the various cities (including appellant cities), which had previously acquired portions of the township territory by annexation or incorporation, were liable to pay their proportionate share of such liability (Supreme Court record pp. 224-234).

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Appellants, Hazel Park Non Partisan Taxpayers Association and John G. Campbell, took no appeal to the supreme court of Michigan from the decision of the circuit court, but the remaining appellants duly perfected appeals. The supreme court of Michigan, in *Hazel Park Non Partisan Taxpayers Ass'n. v. Township of Royal Oak,* 317 Mich. 607, affirmed the decree of the lower court holding appellant cities, which had annexed portions of its territory, liable for their proportionate shares of the bond indebtedness of the township.

Following the decision of the supreme court of Michigan, a notice of substitution of present counsel for appellants, Hazel Park Non Partisan Taxpayers Association and John G. Campbell, was filed in the Oakland County circuit court, and they joined with cross-plaintiff cities of Pleasant Ridge and Huntington Woods in the petition for leave to appeal to this court. Since that time another cross-plaintiff, the City of Ferndale, has filed another petition for leave to appeal, but no printed records in either case have been furnished counsel for appellee to the present time.

Counsel for appellee, Township of Royal Oak, has filed a statement alleging lack of jurisdiction of both appeals on the following grounds:

1. The 5th Amendment to the Constitution of the United States, relied upon in part by appellants, was designed exclusively as a restriction upon the exercise of Federal power, and does not apply to laws enacted by, or, proceedings had under the authority of, a state government.

2. Appellants, Hazel Park Non Partisan Taxpayers Association and John G. Campbell, did not join as appellants in the appeal to the supreme court of Michigan from the decree entered against them by the trial court.

3. Remaining appellants, as municipal corporations of the state of Michigan, have no rights under the 14th Amendment.

In connection with the statement showing lack of jurisdiction, appellee also filed a motion to dismiss or affirm, on the following grounds:

1. No Federal question is presented by the record.

2. The decision and decree of the supreme court of Michigan is final as to appellants, and the questions involved are frivolous.

ARGUMENT AS TO LAW

1. No authorities have been cited by appellants in support of their claims to protection under the 5th Amendment to the Constitution of the United States, and we assume, under the authorities referred to in our statement showing lack of jurisdiction, that this ground of appeal is no longer urged.

2. In appellee's statement opposing jurisdiction, it was pointed out that appellants, Hazel Park Non Partisan Taxpayers Association and John G. Campbell, did not take an appeal to the supreme court of Michigan from the decree entered against them by the trial court. The supreme court of Michigan, in disposing of the issues raised by other appellants in that court, said of the rights of these two appellants:

> "The other parties (these appellants), not having sought a review, must be considered as content with the decree."
>
> *Hazel Park Ass'n. v. Township of Royal Oak*, 317 Mich. 607, 619.

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Counsel for these two appellants have failed to point to a single authority which supports their contention that, despite their failure to appeal from the decree of the circuit court for Oakland county in chancery, after an appeal had been taken by other appellants to the supreme court of Michigan, they have a right to appeal as appellants in this court.

The rule that any party who does not appeal from an adverse judgment entered against him by a court of competent jurisdiction, is thereafter bound by the terms of such judgment, is too well settled to require citation of authorities.

3. That the remaining appellants, cities of Pleasant Ridge and Huntington Woods, being merely political subdivisions of the state, cannot invoke the protection of Sec. 1 of the 14th Amendment to defeat the right of the state of Michigan to direct the levying of the taxes in question, is clearly established by many prior decisions of this court, some of the more important of which are cited at pages 2, 3 and 4 of appellees' statement showing lack of jurisdiction. The rule established by these cases is not controverted by any of the authorities cited by appellants.

CONCLUSION

As appears from the opinions of the supreme court of Michigan in

Whitman v. Township of Royal Oak, 269 Mich. 146, and

Township of Royal Oak v. City of Pleasant Ridge, 295 Mich. 284,

the liability of appellee, Township of Royal Oak, for the payment of these special assessment bonds, was firmly es-

tablished by the supreme court of Michigan more than thirteen years ago. At the same time these same constitutional questions, which appellants now raise, were adversely decided against the township. In the present action the supreme court of Michigan has merely held that appellant cities, which acquired portions of township territory through incorporation or annexation, must now pay their proportionate shares of such township liability. In addition, under the decree of the supreme court, they will also be required to account to the township for their respective shares of the payments made on the bonds from time to time by the township since the first default in payment in 1933.

We respectfully submit that appellants have not presented a case within the jurisdiction of this court and that the appeal should be dismissed.

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